

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CAPITAL ONE BANK USA, N.A.,
Plaintiff,

Case No. 1:11-cv-395
Spiegel, J.

vs

ADRIENNE OGLETREE,
Defendant

REPORT AND RECOMMENDATION

This matter is before the Court on plaintiff's motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1) in connection with the removal of an action from the Hamilton County Municipal Court. (Doc. 8). For the reasons that follow, it is recommended that the motion to proceed *in forma pauperis* be denied.

On June 15, 2011, defendant Adrienne Ogletree filed a notice of removal of an action from the Hamilton County Municipal Court. (Doc. 1). Because Ms. Ogletree did not pay the \$350.00 filing fee or request leave to proceed *in forma pauperis* so that she may remove the action to this Court, the Court ordered Ms. Ogletree to pay the full filing fee of \$350.00 or submit an application and affidavit to proceed *in forma pauperis* within thirty (30) days. (Doc. 2). Ms. Ogletree was advised that the notice of removal shall not be deemed "filed" until the appropriate filing fee is paid or Ms. Ogletree is granted leave to proceed *in forma pauperis*. (*Id.*, citing *Truitt v. County of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998)).

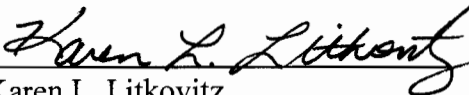
On July 18, 2011, Ms. Ogletree submitted a motion for leave to proceed *in forma pauperis* and an "affidavit" in support thereof. (Doc. 8). However, in response to each question seeking information on her finances, assets, and debts, Ms. Ogletree responded "N/A." As a result of Ms. Ogletree's failure to answer the questions, the Court is unable to conclude from her

affidavit that her income is insufficient to provide herself and her family with the necessities of life and still have sufficient funds to pay the full filing fee of \$350.00 in order to remove this action to the federal court. *See Adkins v. E.I. DuPont De Nemours & Co., Inc.*, 335 U.S. 331, 339 (1948). Therefore, the motion to proceed *in forma pauperis* should be denied.

IT IS THEREFORE RECOMMENDED THAT:

1. Ms. Ogletree's motion to proceed *in forma pauperis* be **DENIED**.
2. If this recommendation is adopted, that Ms. Ogletree be **GRANTED** an **EXTENSION OF TIME** of ten (10) days from the date of any Order adopting the Report and Recommendation to pay the required filing fee of \$350.00. Ms. Ogletree should be notified that the notice of removal will not be deemed "filed" until the appropriate filing fee is paid, *see Truitt v. County of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998), and that if she fails to pay the filing fee within ten (10) days this matter will be remanded back to the state court.

Date: 8/5/2011


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Adrienne Ogletree
5530 Firehole Falls Street
Dublin, OH 43016

2. Article Number
(Transfer from service label)

7003 2260 0002 6723 3081

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

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A. Signature

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☒ Agent
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